

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BAILEY/JAMES, Minors.

UNPUBLISHED
November 20, 2014

No. 321569
Wayne Circuit Court
Family Division
LC No. 93-307624-NA

Before: BORRELLO, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her three minor children¹ under MCL 712A.19b(3)(b)(ii) (minor child suffered physical abuse and the parent who had the opportunity to prevent the injury failed to do so), MCL 712A.19b(3)(g) (parent, without regard to intent, fails to provide proper care or custody for the child and no reasonable expectation that parent will be able to provide proper care and custody within a reasonable time), MCL 712A.19b(3)(i) (parental rights to one or more siblings have been terminated due to serious and chronic neglect or physical abuse), MCL 712A.19b(3)(j) (reasonable likelihood that the child will be harmed if returned to the home of the parent), and MCL 712A.19b(3)(l) (parent's right to another child was terminated). We affirm.

I

Child Protective Services (CPS) received a referral in October 2013, when respondent's oldest child involved in the instant proceedings ("oldest child") reported that respondent punched her in the eye causing swelling. According to the petition, the oldest child also had a "gash" on her head that she reported was caused by being hit by a broom and a knife. Medical records demonstrated burns on the oldest child's upper left thigh and torso from boiling water spilled by another child in August 2013. In several interviews, the oldest child expressed her desire not to be returned to respondent's care. The oldest child was placed in foster care during the proceedings.

¹ According to respondent's mother, respondent has seven children. In 1993, respondent signed a release permanently and voluntarily relinquishing all her parental rights to one of the four children not involved in the instant proceedings. Respondent also reported to a clinical evaluator that "at least two children were raised by relatives from birth or shortly thereafter."

The middle child involved in the instant proceedings (“middle child”) reported to medical professionals that respondent hit her with a broom and an extension cord. She further reported that, by the age of seven, she had not yet attended school, she was unhappy, and another child had burned her with an iron (an iron-shaped mark was observed on her left thigh). A Department of Human Services (DHS) worker testified that she observed the middle child cower in fear of respondent. The middle child was placed with a paternal aunt during the proceedings.

The youngest child involved in the instant proceedings (“youngest child”) had burns covering upper body and left shoulder from boiling water spilled by another child in August 2013. Respondent did not seek medical treatment following this incident, but used home remedies instead. The youngest child was placed in foster care during the proceedings.

In a clinical evaluation of respondent and the children’s father, respondent admitted that she had beaten the oldest child with a belt. She also admitted that the oldest and youngest children were both burned by scalding hot liquids that fell from a hot plate directly above where the children were sitting and she did not seek medical treatment because she feared the children would be taken away from her. Respondent blamed the children who spilled the water and took no responsibility for her children’s burns, which occurred when respondent was in a different area of the home. Respondent further admitted she had a previous conviction for assault with a deadly weapon arising from an argument she had with the children’s father while she and the children’s father had been drinking alcohol. The clinician observed respondent with her children. The oldest and youngest children initially declined contact with respondent. The clinician opined that respondent failed to recognize the seriousness of the conditions in which she had placed her children, she was unlikely to participate in treatment and counseling with sincerity, and ongoing contact with respondent “held very little interest” for the children. The clinician further opined that “there was little to suggest that Permanent Custody of all three children would be contrary to their best interests.”

During the trial court proceedings, respondent admitted that she attended a hearing intoxicated. A court-ordered drug screen from that same day reported respondent’s blood alcohol level was .098, .091, and .079, after three, 40-minute intervals.

Respondent pleaded no contest to the allegations contained in the petition for termination of her parental rights, and in so doing, she stipulated to the statutory grounds for termination. Accordingly, the only issue pertaining to respondent at trial was whether termination was in the best interests of the children.² The trial court concluded that termination was in the children’s best interests, reasoning: (1) respondent failed to properly supervise her children thereby allowing two children to suffer from severe burns, (2) respondent medically neglected those children by failing to seek treatment after they suffered burns, explaining she did not want them taken from her, (3) respondent physically abused her children, (4) respondent failed to take responsibility for her children’s injuries, (5) respondent “remained in denial about many of the things that have brought her children into her care which includes her substance abuse issue,” and (6) respondent was unable to provide a permanency plan for the children that would keep them safe from any future harm. The trial court noted that while placement of the middle child with a paternal aunt weighed against

² The trial court also considered and declined to terminate the children’s father’s parental rights.

termination, when considering the child's best interests, termination of respondent's parental rights was warranted.

II

On appeal, respondent contends the trial court incorrectly based its decision that termination was in the best interests of the minor children upon the clinical evaluation, and further that the trial court failed to properly consider the placement of the middle child with a relative. We disagree.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, [and] the child's need for permanency, stability, and finality" *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal citations and quotations omitted). Whether termination is in the best interests of the children is based on the preponderance of the evidence. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). A trial court's decision regarding a child's best interests is reviewed for clear error. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

A

In support of her argument that the trial court improperly relied on the clinical evaluation, respondent cites to *In re Hulbert*, 186 Mich App 600; 465 NW2d 36 (1990) and claims the evaluation was "speculative." However, contrary to respondent's claim, the evaluator recorded information obtained from an interview with respondent, including her admissions about beating the oldest child, her failure to seek medical attention for her children when they were burned, and her assault with a deadly weapon conviction fueled by drinking alcohol. Thus, the clinical evaluation contained more than just "speculative" opinions. Furthermore, the evaluator documented respondent's failure to accept responsibility for her children's burns, observed respondent's interaction with the children, and particularly noted two of the children's initial reluctance to have contact with respondent. All of this evidence supports the trial court's conclusion that termination was in the minor children's best interests because respondent was neglectful, abusive, and unable to take responsibility.

Hulbert is distinguishable from this case. In *Hulbert*, this Court concluded that a clinical evaluation from a psychologist, when accompanied by "minimal evidence of past neglect," was insufficient to determine that termination of a parent's parental rights was in a minor child's best interests. *Id.* at 605. In contrast, here the trial court relied on numerous examples of abuse, failure to supervise, and neglect—in addition to the clinical evaluation—to conclude that termination was in the minor children's best interests. Thus, a preponderance of the evidence, which includes the evaluation, supports the trial court's finding that it was in the children's best interests to not live in an abusive, neglectful environment with respondent.

B

In *Olive/Metts*, this Court concluded: “A trial court’s failure to explicitly address whether termination is appropriate in light of the children’s placement with relatives renders the factual record inadequate to make a best interest determination and requires reversal.” *Olive/Metts*, 297 Mich App at 43. But the trial court expressly found that despite the middle child’s placement with a paternal aunt, termination was still in her best interests. Thus, respondent’s contentions that the trial court never addressed the *Olive/Metts* requirements are unfounded.

III

Respondent next contends that the trial court erred by accepting her no contest plea without specific findings in support of the trial court’s ruling that termination of her parental rights was warranted. We decline to address this issue on the basis that respondent has waived review of these questions by virtue of her no contest plea. To address respondent’s claim that the trial court’s acceptance of her plea was error would be to permit her to harbor error as an appellate parachute. *Braverman v Granger*, 303 Mich App 587, 608; 844 NW2d 485 (2014).

IV

Respondent also contends that her trial counsel’s agreement to stipulate to several statutory bases for termination constituted ineffective assistance of counsel. We disagree.

“Although the constitutional provisions explicitly guaranteeing the right to counsel apply only in criminal proceedings, the right to due process also indirectly guarantees assistance of counsel in child protective proceedings. Thus, the principles of effective assistance of counsel developed in the context of criminal law apply by analogy.” *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2001), overruled on other grounds by *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014). “To prove that defendant received ineffective assistance of counsel, [s]he must show (1) that counsel’s performance was deficient in that it fell below an objective standard of professional reasonableness and (2) that there is a reasonable probability that the outcome of the trial would have been different but for counsel’s performance. *People v Roscoe*, 303 Mich App 633, 643-644; 846 NW2d 402 (2014) (internal quotation marks and citation omitted).

Trial counsel improperly advised respondent to enter a plea involving her stipulations to MCL 712A.19b(3)(i) and (3)(l). Pursuant to MCL 712A.19b(3)(i), parental rights may be terminated if the “[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical . . . abuse and prior attempts to rehabilitate the parents have been unsuccessful.” Additionally, MCL 712A.19b(3)(l) provides termination is appropriate if “[t]he parent’s rights to another child were terminated as a result of proceedings under section 2(b) of this chapter[.]” Because respondent had only previously voluntarily released a child for adoption and allowed others to be cared for by relatives, but no record evidence demonstrates that her parental rights had ever been terminated, trial counsel’s advice to enter a plea pursuant to MCL 712A.19b(3)(i) and (3)(l) was deficient.

Regardless, respondent cannot establish that she was prejudiced by trial counsel’s advice to enter a plea of no contest. “Only one statutory ground need be established by clear and convincing evidence to terminate a parent’s parental rights.” *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). Even if there was no factual basis to support terminating respondent’s

parental rights under MCL 712A.19b(3)(i) or (3)(l), the trial court also terminated respondent's parental rights on other grounds, including MCL 712A.19b(3)(b)(ii), which provides that a court may terminate a parent's parental rights if the court finds that a child has suffered "physical injury" and "[t]he parent who had the opportunity to prevent the physical injury . . . failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home." Respondent admitted that two of her children suffered burns while she was elsewhere in the home and she failed to seek medical attention for their injuries. Even if respondent could not have actually prevented their burns, she had an opportunity to prevent them from suffering by seeking medical attention for their injuries. Instead, the children were not treated by medical professionals for months until DHS intervened. Furthermore, there is no reason to believe that respondent will be able to provide appropriate care for the minor children because she places her own interests above those of the minor children. Respondent admitted that she never sought medical treatment for the children's burns because she feared the children would be removed from her care. Additionally, respondent has failed to accept any responsibility for her children's injuries, demonstrating she has not learned from her past neglect and will be unable to properly care for the minor children in the future. Thus, MCL 712A.19b(3)(b)(ii) was satisfied, and respondent cannot demonstrate that, but for trial counsel's advice regarding the no contest plea, the outcome of the proceedings would have been different.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens